

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Adrien Joshua Espinoza,

10 Plaintiff,

11 v.

12 Phillip Irby, et al.,

13 Defendants.
14

No. CV-17-00236-TUC-DCB

ORDER

15 On December 18, 2018, this Court was persuaded that an extension of time was
16 necessary to allow Plaintiff access to his legal materials to prepare a Response to
17 Defendants' Motion for Summary Judgment. Plaintiff presented documentation of
18 requests for exchanges of legal materials dating from November 14, 2018, which he alleged
19 had failed to secure the materials requested: (1) box labeled 5 and 6; (2) boxes labeled 1;
20 box 10, and boxes 3 and 4. The Court ordered Defendants to file a Notice of proof that
21 Plaintiff had been given access to these boxes and proof that the Plaintiff had received a
22 copy of the Defendants' Motion for Summary Judgment. The Court granted a 30 day
23 extension of time for filing the Response from the filing date for the Notice of Access, and
24 the Court ordered that no further extensions of time would be granted.

25 On December 21, 2018, the Defendant filed a Notice of Access reflecting that the
26 Plaintiff had not received access to his legal boxes nor had he received the copy of the
27 Motion for Summary Judgment that Defendants allegedly mailed to him on December 7,
28 2018. Pursuant to the Notice of Access, on December 20, 2018, Plaintiff was given access

1 to box 10, the two boxes labeled 1, and the one box labeled 5 and 6. On December 21,
2 2018, the Plaintiff gave back box 5 (renumbered box 5 and 6), and box 10. He checked
3 out boxes 3 and 4. The Defendants electronically transmitted another copy of the Motion
4 for Summary Judgment and related documents electronically via a secure file share service
5 to ADWarden Renault which were hand-delivered and signed for by the Plaintiff on
6 December 21, 2018.

7 On December 26, 2018, an Emergency Motion, drafted on December 23, 2018, was
8 filed by the Plaintiff asking to extend the time to file the Response because he had been
9 severely assaulted on December 21 and 23, 2018, leaving him in extreme pain with his
10 writing arm injured. The proximity in the timing of these assaults is highly suggestive of
11 retaliatory animus. The Court orders the Defendants to secure any camera footage of the
12 cell pod recording the alleged assaults. Likewise, Defendants shall inquire into whether
13 any medical records exist for the Plaintiff from December 21 to date, and if so, make the
14 necessary arrangements for Plaintiff to obtain them to be filed with the Court. In the event
15 there are no such medical records, Plaintiff shall be afforded an immediate medical
16 examination to document the injuries he alleges resulted from the alleged December 21
17 and 23 assaults so that he may file it with the Court. The Court shall afford another 30 day
18 extension of time for this record to be prepared and filed with the Court and for the Plaintiff
19 to prepare and file the Response to the Motion for Summary Judgment.

20 **Accordingly,**

21 **IT IS ORDERED** that the Emergency Motion for Extension of Time (Doc. 57) is
22 GRANTED for 30 days to: February 4, 2019.

23 **IT IS FURTHER ORDERED** that immediately the Defendants shall secure any
24 camera footage recordings of Plaintiff's assaults on December 21, and 23, and shall initiate
25 the processes necessary for the Plaintiff to obtain any existing medical records or to obtain
26 a medical examination, as described above. The Defendants shall file a Notice with the
27 Court when the Plaintiff has in his possession his medical records.


28 **IT IS FURTHER ORDERED** that within 7 days of the filing date of the Notice,

1 the Plaintiff shall file his medical records to support his allegations made here that he was
2 assaulted on December 21 and 23, and the extent of his injuries due to the alleged assault.

3 **IT IS FURTHER ORDERED** that NO FURTHER EXTENSIONS OF TIME
4 SHALL BE GRANTED unless medically necessary. The reaffirms its warning to both
5 parties in this case that failure to comply with directives from this Court may result in
6 sanctions.

7 Dated this 3rd day of January, 2019.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable David C. Bury
United States District Judge